

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JUNE 24, 2015

AMENDED IN SENATE MAY 19, 2015

SENATE BILL

No. 741

**Introduced by Senator Hill
(Coauthors: Senators Anderson and Leno)**

February 27, 2015

An act to add Article 11 (commencing with Section 53166) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 741, as amended, Hill. Mobile communications: privacy.

Existing law makes it a crime to manufacture, assemble, sell, advertise for sale, possess, transport, import, or furnish to another a device that is primarily or exclusively designed or intended for eavesdropping upon the communication of another, or any device that is primarily or exclusively designed or intended for the unauthorized interception of reception of communications between a cellular radio telephone, as defined, and a landline telephone or other cellular radio telephone. Existing law additionally makes it a crime to purchase, sell, offer to purchase or sell, or conspire to purchase or sell, any telephone calling pattern record or list, without the written consent of the subscriber, or to procure, obtain, attempt to obtain, or conspire to obtain, any calling pattern record or list through fraud or deceit. Existing law contains certain exemptions from these crimes for law enforcement agencies.

This bill would require every local agency that operates cellular communications interception technology, as defined, to maintain

reasonable operational, administrative, technical, and physical safeguards to protect information gathered through use of the technology from unauthorized access, destruction, use, modification, or disclosure and implement a usage and privacy policy, as specified, to ensure that the collection, use, maintenance, sharing, and dissemination of information gathered through use of the technology complies with applicable law and is consistent with respect for an individual's privacy and civil liberties. The bill would prohibit a local agency from acquiring ~~or using~~ cellular communications interception technology unless that acquisition ~~or use~~ is approved by a resolution or ordinance adopted by its legislature body at a regularly scheduled public meeting of the legislative body ~~at which members of the public are afforded a reasonable opportunity to comment.~~ *held pursuant to a specified open meetings law.* The bill would require that the resolution or ordinance set forth the policies of the local agency. The bill would require that the local agency make the usage and privacy policy available in writing to the public and if the local agency maintains an Internet Web site, to conspicuously post the usage and privacy policies on that site. The bill would, in addition to any other sanctions, penalties, or remedies provided by law, authorize an individual who has been harmed by a violation of these provisions to bring a civil action in any court of competent jurisdiction against a person who knowingly caused that violation.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 11 (commencing with Section 53166) is
2 added to Chapter 1 of Part 1 of Division 2 of Title 5 of the
3 Government Code, to read:

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5 Article 11. Cellular Communications Interception

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7 53166. (a) For purposes of this article, the following terms
8 have the following meanings:

9 (1) "Cellular communications interception technology" means
10 any device that intercepts mobile telephony calling information
11 or content, including an international mobile subscriber identity
12 catcher or other virtual base transceiver station that masquerades
13 as a cellular station and logs mobile telephony calling information.

1 (2) “Local agency” means any city, county, city and county,
2 special district, authority, ~~community redevelopment agency~~, or
3 other political subdivision of the state, and includes every county
4 sheriff and city police department.

5 (b) Every local agency that operates cellular communications
6 interception technology shall do both of the following:

7 (1) Maintain reasonable security procedures and practices,
8 including operational, administrative, technical, and physical
9 safeguards, to protect information gathered through the use of
10 cellular communications interception technology from unauthorized
11 access, destruction, use, modification, or disclosure.

12 (2) Implement a usage and privacy policy to ensure that the
13 collection, use, maintenance, sharing, and dissemination of
14 information gathered through the use of cellular communications
15 interception technology complies with all applicable law and is
16 consistent with respect for an individual’s privacy and civil
17 liberties. This usage and privacy policy shall be available in writing
18 to the public, and, if the local agency has an Internet Web site, the
19 usage and privacy policy shall be posted conspicuously on that
20 Internet Web site. The usage and privacy policy shall, at a
21 minimum, include all of the following:

22 (A) The authorized purposes for using cellular communications
23 interception technology and for collecting information using that
24 technology.

25 (B) A description of the job title or other designation of the
26 employees who are authorized to use, or access information
27 collected through the use of, cellular communications interception
28 technology. The policy shall identify the training requirements
29 necessary for those authorized employees.

30 (C) A description of how the local agency will monitor its own
31 use of cellular communications interception technology to ensure
32 the accuracy of the information collected and compliance with all
33 applicable laws, including laws providing for process and time
34 period system audits.

35 (D) The existence of a memorandum of understanding or other
36 agreement with another local agency or any other party for the
37 shared use of cellular communications interception technology or
38 the sharing of information collected through its use, including the
39 identity of signatory parties.

1 (E) The purpose of, process for, and restrictions on, the sharing
2 of information gathered through the use of cellular communications
3 interception technology with other local agencies and persons.

4 (F) The length of time information gathered through the use of
5 cellular communications interception technology will be retained,
6 and the process the local agency will utilize to determine if and
7 when to destroy retained information.

8 (c) No local agency may acquire ~~or use~~ cellular communications
9 interception technology unless approved by its legislative body by
10 adoption, at a regularly scheduled public meeting ~~with an~~
11 ~~opportunity for public comment, held pursuant to the Ralph M.~~
12 ~~Brown Act (Chapter 9 (commencing with Section 54950) of Part~~
13 ~~1 of Division 2 of Title 5 of the Government Code), of a resolution~~
14 or ordinance authorizing that acquisition or use and the usage and
15 privacy policy required by this section.

16 (d) In addition to any other sanctions, penalties, or remedies
17 provided by law, an individual who has been harmed by a violation
18 of this section may bring a civil action in any court of competent
19 jurisdiction against a person who knowingly caused that violation.
20 The court may award a combination of any one or more of the
21 following:

22 (1) Actual damages, but not less than liquidated damages in the
23 amount of two thousand five hundred dollars (\$2,500).

24 (2) Punitive damages upon proof of willful or reckless disregard
25 of the law.

26 (3) Reasonable attorney’s fees and other litigation costs
27 reasonably incurred.

28 (4) Other preliminary and equitable relief as the court determines
29 to be appropriate.

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